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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,980	10/04/2001	David B. Weiner	UPN-4105	4113

34132 7590 04/08/2003

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EXAMINER

BROWN, STACY S

ART UNIT	PAPER NUMBER
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1648

16

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicant No.	Applicant(s)	
	09/971,980	WEINER ET AL.	
	Examiner	Art Unit	
	Stacy S Brown	1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 February 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 29-36 and 45-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 29-36 and 45-58 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 October 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7,10,11</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment and election in response to the restriction requirement, received February 10, 2003, is acknowledged and entered. Applicant has elected Group VII, claims 29-36 and 45-58. Claims 29-36 and 45-58 are pending and examined on the merits.

Claim Objections

2. Claim 55 is objected to because of the following grammatical error: "comprises" should be "comprising".

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-36 and 45-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tardei *et al* (*J. Clin. Micro.*, 38:2232-2239, June 2000) in view of Khromykh *et al* (*J. Virol.*, 72:5967-5977, July 1998) and Houghton *et al* (5,350,671). The claims are drawn to a method and kit for identifying individuals exposed to flavivirus (West Nile) or pestivirus. The method uses antibodies that specifically bind to the capsid (or core) protein, and alternatively, the capsid itself. If binding between the antibody/antigen is detected, then exposure to flavivirus or pestivirus is confirmed. An additional quantifying step may be taken in the assay.

Tardei discloses an ELISA method for detecting West Nile virus infection with antibodies to WN antigens (abstract). The method is used to detect infection in patients. The antigens are propagated in Vero cells (page 2232, column 2, last paragraph). Tardei is silent on the specific antigens used to detect antibodies.

Khromykh discloses antibodies that bind specifically to the C protein of flavivirus Kunjin virus (abstract, and figure 2 caption).

It would have been obvious to incorporate the C protein of a flavivirus, and in particular WNV, into the method of Tardei. One would have been motivated to use the C protein because Houghton discloses methods of immunoassay for detecting antibodies to flavivirus Hepatitis C virus capsid protein. *Houghton says that antigens in the C portion of HCV and other flaviviruses should provide diagnostic reagents* (col. 30, lines 45-54). One would have had a reasonable expectation of success that the C protein or antibodies to C protein would detect exposure because Houghton detects exposure based on the C protein of HCV.

Therefore, the invention as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1648

Conclusion

4. No claim is allowed.

Papers relating to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 located in Crystal Mall 1. The Fax number for Art Unit 1648 is (703) 308-4426. All Group 1600 Fax machines will be available to receive transmissions 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Stacy S. Brown, whose telephone number is (703) 308-2361. The Examiner can normally be reached on Monday through Friday from 6:30 AM-4:00 PM, (EST). If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, James C. Housel, can be reached at (703) 308-4027. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Stacy S. Brown
Stacy S. Brown
March 28, 2003

James C. Housel
JAMES HOUSEL 4/7/03
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600